

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLAYTON EVAN CUMMINGS,

Petitioner,

v.

MELISSA ANDREWJESKI,

Respondent.

CASE NO. 2:23-cv-1314-JNW-GJL

ORDER FOR SERVICE AND
RESPONSE TO MOTION TO
STAY, § 2254 PETITION

This is a federal habeas action filed under 28 U.S.C. § 2254. Petitioner Clayton Evan Cummings is currently incarcerated at the **Coyote Ridge Corrections Center** and is subject to the Court's Prisoner E-Filing Initiative pursuant to General Order 06-16. The Court, having reviewed Petitioner's federal habeas Petition (Dkt. 6), hereby finds and **ORDERS** as follows:

(1) The Clerk shall arrange for the service, by e-mail upon Respondent¹ and upon the Attorney General of the State of Washington, of copies of the following documents: the Petition

¹ The proper respondent to a habeas petition is the "person who has custody over [the petitioner]." 28 U.S.C. § 2242; *see also* § 2243; *Brittingham v. United States*, 982 F.2d 378 (9th Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989). Petitioner is currently incarcerated at the Coyote Ridge Corrections Center. *See* Dkt. 6. As such, only the Superintendent of Coyote Ridge Corrections Center, Melissa Andrewjeski, is the proper respondent in this matter. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (the person having custody of the person detained for purposes of § 2254 is typically the warden of the facility where the petitioner is incarcerated).

(Dkt. 6), Petitioner's Motion for habeas corpus relief (Dkt. 8), Motion for Stay and Abeyance (Dkt. 9), and this Order. The Clerk shall also direct a copy of this Order and of the Court's *pro se* instruction sheet to Petitioner.

(2) At this time, Respondent is directed to respond only to Petitioner's Motion for Stay and Abeyance (Dkt. 9) and Motion for habeas corpus relief (Dkt. 8). The Clerk is directed to note the Motions (Dkts. 8, 9) for **October 20, 2023**; Respondent shall file a response on or before **October 16, 2023**, and Petitioner may file a reply on or before **October 20, 2023**.

(3) Within *forty-five (45) days* after the Court has issued an Order on the Motion to stay (or, if a stay is granted, from the time the stay is lifted), Respondent shall file and serve an answer in accordance with Rule 5 of the Rules Governing Section 2254 Cases in United States District Courts. As part of such answer, Respondent shall state whether Petitioner has exhausted available state remedies and whether an evidentiary hearing is necessary. Respondent shall not file a dispositive motion in place of an answer without first showing cause as to why an answer is inadequate. Respondent shall file the answer with the Clerk of the Court and serve a copy of the answer on Petitioner.

(4) The answer will be treated in accordance with LCR 7. Accordingly, on the face of the answer, Respondent shall note it for consideration on the fourth Friday after filing. Petitioner may file and serve a response not later than the Monday immediately preceding the Friday designated for consideration of the matter, and Respondent may file and serve a reply not later than the Friday designated for consideration of the matter.

(5) Filing by Parties, Generally

All attorneys admitted to practice before this Court are required to file documents electronically via the Court's CM/ECF system. Petitioner shall file all documents electronically.

1 All filings must indicate in the upper right-hand corner the name of the magistrate judge to
2 whom the document is directed.

3 Any document filed with the Court must be accompanied by proof that it has been served
4 upon all parties that have entered a notice of appearance in the underlying matter. Petitioner shall
5 indicate the date the document is submitted for e-filing as the date of service.

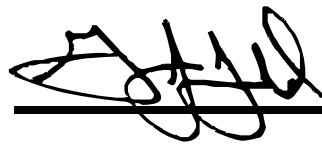
6 (6) Motions

7 Any request for court action shall be set forth in a motion, properly filed and served.
8 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a
9 part of the motion itself and not in a separate document. The motion shall include in its caption
10 (immediately below the title of the motion) a designation of the date the motion is to be noted for
11 consideration on the Court's motion calendar.

12 (7) Direct Communications with District Judge or Magistrate Judge

13 No direct communication is to take place with the District Judge or Magistrate Judge with
14 regard to this case. All relevant information and papers are to be directed to the Clerk.

15 Dated this 13th day of September, 2023.

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18 Grady J. Leupold
19 United States Magistrate Judge
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